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respect to corporations is valuable and suggestive. His historical introduction is also worthy of special study. In it the effort is made to establish the principles under which political power is established and entrusted to governmental agents, and to show the natural unit of such power. While we may disagree with the conclusions drawn from the facts by the author, this chapter well repays such study as may be given it.

The whole subject receives a treatment that discloses no mean ability on the part of the author. We cannot but regard it as unfortunate however that this ability has been expended in an effort to support what under the present decisions we cannot but regard as an untenable hypothesis. Furthermore we cannot discover in those decisions a real tendency in the direction suggested by this work. Were it otherwise, we should be inclined to praise the author's work. Until, however, a redistribution of National and State power has been made, the book must impress the reader as somewhat quixotic.

THE FEDERAL POWER OVER CARRIERS AND CORPORATIONS.

By E. PARMELEE PRENTICE. New York: The Macmillan Company. 1907. Pp. xl, 244.

It is instructive to take up Mr. Prentice's treatment of this subject immediately after reading Mr. Hendrick's more ambitious work. The point of view, though apparently that of a partisan, is essentially different. A strong argument is made against the extension of Federal legislation in respect to commerce, and this argument is, in the main, fortified by citations of adjudged cases carefully selected.

The author deprecates the modern tendency to regard present-day problems as so vitally different from those existing at the time of the adoption of the Constitution as to require an interpretation of that instrument in the light of supposed modern needs rather than under the instruction of the past. He founds his plea on an historical review of the constitutional principles in point, particularly those, dealing of course, with the commerce clause, and rests his case on the principle that: "The important feature about this history is that the power which was originally given to Congress *in order to secure an unrestrained intercourse between the States** has developed under the decisions of the Supreme Court, subject to the influence of this constitutional purpose only, and with no other end in view. The States have been

*Italics are ours.

deprived of power to interfere with the freedom of interstate communication, while on the other hand the nature of the jurisdiction which Congress has acquired over the avenues of interstate trade, does not in any proper view of the Constitution, authorize it to close those avenues to any person." (p. 137).

The importance of such a constitutional principle is obvious. It is admitted that foreign commerce is not subject to a similar rule. An embargo is possible there, but this, it is said, is due to the necessarily broader power entrusted to the National Government in its dealings with foreign nations and over navigation. On this ground *Gibbons v. Ogden*, 9 Wheat. 1, to which very careful study is given, is explained. The State law, it is said, was invalid, not because it established a monopoly of interstate transportation, but because it amounted to a regulation of the coasting trade, "a subject which had been wholly confided to Congress." (p. 89).

With the principle above stated as a premise, proposed modern legislation as to federal incorporation and restriction of interstate traffic, except under federal license, is regarded as unconstitutional (p. 226). "Transportation from State to State of legitimate articles of commerce cannot be forbidden. Congress is authorized to regulate, not to destroy, commerce among the States." (p. 51). Therefore, it is argued, Congress may not impose restrictions on interstate commerce as a mere commercial measure but may do so in aid of some expressly granted power. So, for example, a tax on freight receipts, as under the War Revenue Act of 1898, would be unquestionably valid.

The argument is clear and forcible, but hardly, we believe, gives due weight to the *Lottery Case*, 188 U. S. 321. It is true that four of the justices dissented from the decision there rendered, and Mr. Prentice may regard the case as so counter to the antecedent tendency of the decisions as to be of doubtful authority. But since the Federal Government has admittedly no police power as such, the prohibition of the interstate transportation of lottery tickets had to be upheld if at all as a commercial regulation. Yet such transportation was prohibited. Such a decision so directly opposed to the central thought of this author should have received most careful consideration. It cannot be disposed of by the suggestion that lottery tickets are not legitimate subjects of commerce, since the Court expressly held (p. 354), "We are of opinion that lottery tickets are subjects of traffic and therefore are subjects of commerce, and the regulation of the carriage of such tickets from State to State, at least by independent carriers, is a regulation of commerce among the

several States." And while the Court admits that cases might be presented in which prohibitions of interstate commerce would not be sustained (p. 362), upon this decision great reliance would doubtless be placed in an attempt to sustain restrictive legislation as to interstate operations deemed contrary to public policy.

This right to engage in interstate operations Mr. Prentice regards as a natural inalienable right not subject to arbitrary governmental interference. The question will at once arise, however, as to what constitutes such arbitrary interference and whether these questions, so far as federal legislation is concerned, will not be brought within the "due process" clause of the Fifth Amendment as instances of unwarranted interferences with freedom of contract. In this case they, of course, must pass the test of certain established limitations, but passing them may be sustained as an instance of federal activity under the commerce clause.

Careful consideration is given to the Anti-Trust Act of 1890 and the decisions thereunder, since their tendency has undoubtedly been to allow certain forms of prohibitive federal legislation, as that act covers reasonable as well as unreasonable restraints of interstate trade. A review of these decisions, the author contends, "shows that the Court, in construing the statute which is based upon the power of Congress to maintain intercourse among the States, has gone to the verge of Federal jurisdiction. An extension of present doctrines could be made only by sacrifice of State authority essential for efficient local government, and a matter of still greater importance by overturning long established principles of constitutional law."

The cry for effectiveness of regulation and control has tended to obscure the price which would have to be paid for centralizing such control, in the loss of that local liberty which is traditionally dear to the person living under Anglo-Saxon institutions. The tendency to disregard precedents in the effort to establish this centralization of regulation and control, the probable ineffectiveness of such regulation and control if actually attempted, and the avenues opened by it for perversion of purpose, so strikingly evidenced in all tariff legislation, lead us to accord to Mr. Prentice's book a hearty welcome, though we regard it open to the criticisms suggested above.

"Governmental interference with individual activities, accepted because necessary, welcomed by none, demands the completest measure of home rule." That this "home rule" sometimes proves ineffective is hardly ground for expecting more satisfactory results from what will often be largely, if

not altogether, external authority where federal regulation is attempted.

THE CRIMINAL PROSECUTION AND CAPITAL PUNISHMENT OF ANIMALS. By E. P. EVANS. New York: E. P. Dutton & Co. 1906. Pp. x, 384.

"The present volume is the result of the revision and expansion of two essays entitled 'Bugs and Beasts Before the Law', and 'Modern and Mediaeval Punishment,' which appeared in *The Atlantic Monthly*, in August and September 1884." A great amount of curious and interesting learning has been collected by the author, most of which the average reader will find very novel, notwithstanding the well-known rules of the Mosiac law and even the familiar doctrine of the Common Law with respect to deodands. But though the title of the work suggests a great part of its contents, and of the material which forms an important element of the author's development of his subject, it hardly leads one to expect the very valuable discussion of Penology in its broader relations, which forms the latter part of the book.

The connection that apparently exists between the idea underlying the attitude of the public towards the criminal responsibility of animals, and the standards of that same public with respect to human responsibility is treated with great thoroughness, and this treatment is, to say the least, very suggestive and convincing. New light is shed on this always important topic. The book, therefore, has a much greater value than that which would attach to a mere collection of curious historical information. Its broad and scholarly treatment merits for it special attention.

THE AMERICAN LAWYER. By JOHN R. DOSPASSOS, of the New York Bar. Pp. iv, 185. The Banks Law Publishing Co. 1907.

In this study of the American lawyer "as he was—as he is—as he can be" Mr. Dos Passos finds many causes for criticism of the profession. Insufficient culture to begin with, superficial study of the law itself, and a growing spirit of commercialism are particularly inveighed against. The author believes serious degeneration has occurred since the days "before the War," but is convinced that he sees here the same tendency appearing in other walks of life. The faults he alleges suggest to a great extent the remedies he offers. It is rather surprising, however, to find a seven-year preparation advocated, though doubtless there is much truth in